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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/524,029	03/13/2000	Cynthia S. Bell	ITL-0333US (P8221)	6169
21906 7590 05/20/2008 TROP PRUNER & HU, PC 1616 S. VOSS ROAD, SUITE 750 HOUSTON, TX 77057-2631				
EXAMINER BODDIE, WILLIAM				
ART UNIT		PAPER NUMBER		
2629				
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05/20/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 09/524,029	<b>Applicant(s)</b> BELL, CYNTHIA S.
<b>Examiner</b> WILLIAM L. BODDIE	<b>Art Unit</b> 2629

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 02 May 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  
 NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: \_\_\_\_\_.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_.

/Sumati Lefkowitz/  
 Supervisory Patent Examiner, Art Unit 2629

Continuation of 11, does NOT place the application in condition for allowance because: the Applicant's arguments are not persuasive. On page 3 of the Remarks, the Applicant argues that Nishibe does not teach controlling display brightness.

The Examiner must respectfully disagree. The Applicant continues to attack the Nishibe and Murakami references individually. Nonobviousness cannot be shown by attacking the references individually. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The current rejection is seen as stronger than the previous rejection put forth to the Board as the two pieces of prior art are much more closely related and have much more detailed discussion regarding the ambient light measurement and subsequent display brightness control in the Murakami reference.

Also on page 3 of the Remarks, the Applicant appears to attack the motivation to combine the references stating that the wide dynamic range achieved by Nishibe would only provide a benefit were the display outside.

The Examiner would like to point out that nowhere within the claims is it required that the display remain inside. Furthermore the Applicant's own specification discusses the use of mobile products in "a broad range of environmental, or ambient, illumination conditions." This disclosure paired with the embodiments contemplated, PDAs, cameras, cellular phones, are all very commonly used outside. Finally, Murakami specifically addresses outside use of the device. Therefore the wide dynamic range achieved by Nishibe's technique would certainly seem to appear valuable.

The Applicant additionally argues that the proposed advantage of speed in Nishibe's technique is pure speculation and that Murakami is capable of only measuring the ambient light from a single location rather than the taking an average level on the entire display.

It must be noted that while Murakami might be able of only measuring ambient light at a single location this is not how Murakami disclosed performing the measurement. Nishibe teaches a method that only requires taking a measurement at one location. It would be obvious to one of ordinary skill in the art that Nishibe's technique would result in faster processing and require less processing power to perform. This advantage along with the wider dynamic range of Nishibe's technique are seen as providing sufficient motivation for the proposed combination.

As shown above the rejection of the claims on the 103 grounds discussed in the final office action are seen as sufficient and are thus maintained.

On pages 3-4 of the Remarks, the Applicant traverses the 112 rejection of the claims. The Applicant argues that the claims only require "receiving an indicator of the ambient light on a display by accumulating energy into a plurality of sensors of an imager."

The 112 rejection is concerned with only a portion of the claim cited by the Applicant. As detailed previously, there is no disclosure within the specification requiring that the ambient light is on a display. The only discussion of the topic within the specification is, in fact, to the contrary. As discussed in the previous office action page 10, lines 15-21 discuss an embodiment where ambient light is on a system and specifically not on a display. As such the 112 rejection of the claims is seen as sufficient and is thus maintained.